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October 19, 1989

The Honorable Alan Stephens
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

The Honorable Susan Gerard
The Honorable Suzanne Laybe
Arizona State Representatives
State Capitol - House Wing
Phoenix, Arizona 85007

Re: 189-084 (R89-134)

Dear Senator Stephens and Representatives
Gerard and Laybe:

Recently, the Legislature in Special Session amended A.R.S. § 1-301 to designate the third Monday in January as "Martin Luther King, Jr. Day." See Laws 1989 (1st Spec. Sess.) Ch. 4 (Act). The Legislature, in the same Act, also changed the observance of "Columbus Day" from the second Monday to the second Sunday in October and made other conforming changes. Id. You ask whether the people may utilize their referendum power to put to a vote only that portion of the Legislature's Act which changed the observance of Columbus Day from Monday to Sunday. We conclude that any item, section or part of the Legislature's Act may be referred to the people by referendum.

Arizona's Constitution provides:

The legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any Act, or item, section, or part of any Act, of the Legislature.

Ariz. Const. art, IV, pt. 1, § 1(1) (emphasis added).

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Specifically, five per cent of the qualified electors "may order the submission to the people at the polls of any measure, or item, section, or part of any measure, enacted by the Legislature. . . ." Id. at § 1(3) (emphasis added); see also Id. at § 1(7).

The word "measure" refers to a "definite, specific act or resolution." McBride v. Kerby, 32 Ariz. 515, 522, 260 P. 435, 437 (1927), overruled on other grounds, Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617 (1952). The measure in this case is Laws 1989 (1st Spec. Sess.) Ch. 4, which is an act containing only one section. Under these circumstances, the issue raised by your question is whether an item or part of the single section of the Act may be referred to the people and put to a vote. We conclude that any item or part of this single section Act is subject to the people's referendum power.

The constitutional reservation of the referendum power establishes the electorate as a coordinate source of legislation with the Legislature. Queen Creek Land & Cattle Corp. v. Yavapai County Bd. of Supervisors, 108 Ariz. 449, 451, 501 P.2d 391, 393 (1972). The Legislature certainly has the power to adopt legislation which repeals only a part of a section of a statute and, therefore, so do the people. In fact, the Legislature itself recognizes the people's right to repeal less than an entire act. See A.R.S. § 19-101 ("[I]f the [referendum] petition is against less than the whole act or ordinance then [the petition must also] set forth here the item, section, or part, of any measure on which the referendum is used . . ."; see also McBride, 32 Ariz. at 522, 260 P. at 437-438 (recognizing that "if the reference is of a part of an act, that the exact language referred be set up").

To conclude that the people may not repeal part of a section would mean that the people could not exercise their full right of referendum over a single section act. This is an absurd result which we conclude the framers of our constitution could not have intended. This is particularly true in Arizona where the decision to include the initiative and referendum provisions in the constitution was a "burning issue in this State" and where the constitution was "ratified by a very large percentage of the vote cast." Whitman v. Moore, 59 Ariz. 211, 218, 125 P.2d 445, 450 (1942), overruled on other grounds, Brousseau v. Fitzgerald, 138 Ariz. 453, 675 P.2d 713 (1984), Benck v. Superior Court, 66 Ariz. 320, 187 P.2d 656 (1947).

The history of our Constitution and its adoption, to which we have previously referred, shows beyond the possibility of contradiction that the

people themselves deliberately and intentionally announced that, by its [initiative and referendum provision] adoption, they meant to exercise their supreme sovereign power directly to a far greater extent than had been done in the past, and that the legislative authority, acting in a representative capacity only, was in all respects intended to be subordinate to direct action by the people.

Whitman, 59 Ariz. at 220, 125 P.2d at 450-451; see also Laos v. Arnold, 141 Ariz. 46, 47, 685 P.2d 111, 112 (1984) (constitutional provisions are to be construed liberally to carry out the purpose for which they were adopted).

Even without this clear historical mandate to construe the referendum provision in favor of the people, our conclusion would be the same. To determine that the words "item" or "part" contained in article IV, part 1, section 1 of Arizona's Constitution are merely interchangeable with the word "section" would be contrary to the rule set forth in Adams v. Bolin:

[O]ne of the many rules pertaining to constitutional provisions is that some meaning must be given to each phrase of the Constitution unless in giving the words their grammatical and common meaning will create some impossibility or unworkable situation, or lead to an absurdity. [citations omitted]. In the interpretation of a statute . . . the cardinal principle is to give full effect to the intent of the lawmaker, and each word, phrase, clause and sentence must be given meaning so that no part will be void, inert, redundant or trivial.

74 Ariz. 269, 275, 247 P.2d 617, 621 (1952). Additionally, judicial construction of the term "part" in other contexts indicates that the term does not refer to an entire section. In Allen v. Walker County, 199 So. 2d 854 (Ala. 1967), for example, the Alabama Supreme Court in interpreting a severability provision stated:

The word "part" does not mean an entire section, or the entire Act, but a separable clause, sentence, or provision.

Id. at 860; see also State v. Jones, 142 Ariz. 302, 681 P.2d 561 (App. 1984) (court severs clause from remainder of subsection).

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We, therefore, conclude that the people may utilize their referendum power to put to a vote only that portion of Laws 1989 (1st Spec. Sess.) Ch. 4 which changed the observance of Columbus Day from the second Monday in October to the second Sunday of that month.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN
Attorney General

BC:LTH:CW:em